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IN THE
SUPREME COURT OF THE UNITED STATES

NO. 79-1574

CHARLES H. BROWN and CHAD ALLAN BROWN,
Petitioners

v.

JOE A. STONE, et al., Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

Harry N. Rayburn, Jr.
Post Office Box 22684
Jackson, Mississippi 39205
Attorney for Petitioners

Robert Rubin
Post Office Box 2242
Jackson, Mississippi 39205
Of Counsel

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Petitioners, Charles H. Brown and Chad Allan Brown, a minor, by and through his father and next friend, Charles H. Brown, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of Mississippi entered in this cause on December 19, 1979.

Respondents in this proceeding

are Joe A. Stone, Margaret Ann Peel, Billy L. Martin, Herman K. Smith, and Columbus Wright, members of the Board of Trustees of the Houston (Mississippi) Municipal Separate School District, Jack Cheatham, Superintendent of the Houston (Mississippi) Municipal Separate School District, and Ann Dexter, Principal of the Houston (Mississippi) Elementary School.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Mississippi, reported at 378 So.2d 218(1979), is annexed as Appendix A. The opinion and final decree of the Chancery Court of the First Judicial District of Chickasaw County, Mississippi, not reported, are annexed as Appendices B and C, respectively.

JURISDICTION

The judgment and opinion of the Supreme Court of the State of Mississippi

was entered on December 19, 1979. A timely petition for rehearing was denied en banc on January 9, 1980, (see Appendix D) and this petition for certiorari is filed within ninety (90) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

1. Whether the statutory religious exemption to the mandatory vaccination of school children required by Miss. Code Ann. §41-23-37(Supp. 1978) is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.

2. Whether the statutory religious exemption to the mandatory vaccination of school children required in Miss. Code Ann. §41-23-37(Supp. 1978) is unconstitutional under the First Amendment where it requires that the

parents or guardians of the child be bona fide members of a recognized denomination whose religious teachings require reliance on prayer as spiritual means of healing in order to qualify for the exemption.

3. Whether the First Amendment requires that the benefit of the statutory religious exemption to mandatory vaccination required by Miss. Code Ann. §41-23-37(Supp. 1978) be extended to cover all religious beliefs.

CONSTITUTIONAL PROVISIONS INVOLVED

The First and Fourteenth Amendments to the United States Constitution.

STATUTORY PROVISIONS INVOLVED

Miss. Code Ann. §41-23-37(Supp. 1978):

> IMMUNIZATION PRACTICES FOR CONTROL OF VACCINE PREVENTABLE DISEASES; SCHOOL ATTENDANCE BY UNVACCINATED CHILDREN.
>
> Whenever indicated, the State Health Officer shall specify such immunization practices as may be considered best for the

control of vaccine preventable diseases. A listing shall be promulgated annually or more often, if necessary.

Except as provided hereinafter, it shall be unlawful for any child to attend any school, kindergarten or similar type facility intended for the instruction of children (hereinafter called "schools"), either public or private, unless they shall first have been vaccinated against those diseases specified by the State Health Officer.

A certificate of exemption from vaccination for medical reasons may be offered on behalf of a child by a duly licensed physician and may be accepted by the local health officer when, in his opinion, such exemption will not cause undue risk to the community. A certificate of religious exemption may be offered on behalf of a child by an officer of a church of a recognized denomination. This certificate shall certify that parents or guardians of the child are bona fide members of a recognized denomination whose religious teachings require reliance on prayer or spiritual means of healing.

. . .

It shall be the responsibility of the person in charge of each school to enforce the requirements for immunization. Any child not

> in compliance at the end of ninety (90) days from the opening of the fall term must be suspended until in compliance, unless the health officer shall attribute the delay to lack of supply of vaccine or some other such factor clearly making compliance impossible.
>
> Failure to enforce provisions of this act shall constitute a misdemeanor and upon conviction be punishable by fine or imprisonment or both.

Miss. Code Ann. §37-7-301(1972), set forth in Appendix E hereto, directs the boards of trustees of school districts to enforce Miss. Code Ann. §41-23-37(Supp. 1978).

STATEMENT OF THE CASE

In August, 1978, petitioner, Charles H. Brown, sought to enroll his son, the minor petitioner, Chad Allan Brown, in the first grade of the Houston Municipal Separate School District, Houston, Mississippi. Chad had not been vaccinated against those diseases specified by the State Health Officer

in accordance with Miss. Code Ann. §41-23-37(Supp. 1978), because such vaccinations are contrary to strong, genuine and sincere religious beliefs actively practiced and followed by Charles H. Brown and his family. Although petitioners are members of the Church of Christ, the Church does not, as a religious body, teach against the use of medicines, immunizations or vaccinations or require reliance on prayer or spiritual means of healing. Because no certificate in the form specified by the statute was offered (or could have been offered) on behalf of Chad, respondents denied petitioners' request for a religious exemption and refused to admit Chad to school.

Petitioners filed suit in the Chancery Court of the First Judicial District of Chickasaw County, Mississippi, invoking the First Amendment

and asking the court to enjoin respondents from refusing to enroll the minor petitioner in the first grade and to require respondents to grant the minor petitioner a religious exemption from vaccination. Respondents filed a general demurrer. The chancery court in a written opinion found that petitioners did not file a certificate of religious exemption complying with state law, sustained the demurrer and dismissed the cause.

Petitioners appealed to the Supreme Court of Mississippi arguing that the state could not allow a religious exemption it legislatively created to operate unconstitutionally and that eligibility for the exemption could not be limited to those belonging to certain denominations.

The Mississippi Supreme Court struck down the entire religious

exemption provision under the Fourteenth Amendment Equal Protection Clause, holding that it discriminated against the great majority of children whose parents have no such religious convictions in that it required the great body of school children to be vaccinated and at the same time exposed them to the hazard of associating in school with children exempted under the religious exemption provision who had not been immunized as required by the statute. At no time prior to the Mississippi Supreme Court decision did either side raise the applicability of the Fourteenth Amendment Equal Protection Clause to the case. The petition for rehearing pointed out that the court's decision precluded the legislature from properly restructuring the religious exemption and jeopardized the validity of the medical exemption.

REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW DECIDED A FEDERAL QUESTION IN A WAY NOT IN ACCORD WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT.

Instead of deciding the case on First Amendment grounds the Mississippi court invoked the Equal Protection Clause of the Fourteenth Amendment to strike the religious exemption to the state's mandatory school immunization law. The court determined that an exemption based on religious belief discriminated against the majority of children whose parents had no religious convictions concerning immunization by requiring them to associate in school with unvaccinated children. In so holding the court ignored standards for applying the Equal Protection Clause to state legislation set forth in McGowan v. Maryland, 360 U.S. 420(1961).

The court made no finding that the

discrimination resulting from the exemption was invidious, or that the religious exemption was wholly irrelevant to the achievement of the state's objective, or that no state of facts could reasonably be conceived to justify the exemption. There is absolutely nothing in the court's opinion indicating that it measured the exemption provision against any of these McGowan criteria.

Certainly a legislature in enacting a vaccination law with a religious exemption could reasonably find that the exception was necessary to accommodate the sincere religious beliefs of the few and to insure their religious freedom while creating minimal hazard to the many. The Mississippi legislature was in a position to consider the necessary facts and determine the extent to which the failure of some school children to be vaccinated endangers those who have

been. The state court failed to give the legislature the benefit of the doubt and presume that it acted within its constitutional power in granting the exemption. McGowan v. Maryland requires such discretion even where, in practice, laws result in some inequality.

Interestingly enough, the court allowed the medical exemption to stand even though it creates the same discrimination cited in striking down the religious exemption.

By not properly applying the standards of McGowan v. Maryland, the state court superimposed its judgment and wisdom for that of the legislature and improperly invoked the Equal Protection Clause as a bar to the religious exemption in the statute.

2. THE DECISION BELOW BRINGS INTO QUESTION THE CONSTITUTIONALITY OF THE EXEMPTION PROVISIONS OF ALL STATE SCHOOL

VACCINATION LAWS.

All fifty (50) states have mandatory school vaccination laws. All fifty (50) laws allow medical exemptions, forty-eight (48) allow religious exemptions, and seventeen (17) allow philosophical exemptions. (See Appendix F).

If the Mississippi court's interpretation and application of the Equal Protection Clause is correct, then all such exemption provisions, whether medical, philosophical, or religious, are invalid, since they all permit unvaccinated children to attend school with vaccinated children. If the court below is correct, no statutory religious exemption, however structured, could survive Equal Protection Clause attack.

3. UNLESS THE DECISION BELOW IS OVERTURNED, MISSISSIPPI CITIZENS WILL BE DENIED THE EQUAL PROTECTION OF THE LAW.

The decision below notifies the

Mississippi legislature that religious belief is unavailable as a grounds for exemption in structuring vaccination laws. If the decision is correct, then Mississippi citizens are denied nothing. However, if it is incorrect, then so long as it remains in force Mississippi citizens will wrongfully be denied statutory entitlements and benefits available to citizens in at least forty-seven (47) other states.

4. THE DECISION BELOW LEAVES UNANSWERED IMPORTANT FIRST AMENDMENT QUESTIONS RIPE FOR DECISION.

Because it rejected the concept of religious exemption to vaccination laws, the court below did not address important First Amendment questions.

Before the Mississippi court raised its Equal Protection theory, the primary issues in this controversy had been (1) whether a state could limit entitle-

ment to a statutory religious exemption to bona fide members of certain recognized denominations, or (2) whether once having determined to grant a religious exemption a state must make it available to all who can show sincere religious beliefs against vaccination regardless of sect affiliation.

These questions concerning the free exercise of religion remain and, by themselves, are of sufficient fundamental importance to justify the granting of certiorari.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Mississippi Supreme Court.

Respectfully submitted,

HARRY N. RAYBURN, JR.
Post Office Box 22684
Jackson, Mississippi 39205
Attorney for Petitioners

ROBERT RUBIN
Post Office Box 2242
Jackson, Mississippi 39205
Of Counsel

IN THE
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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of April, 1980, three copies of the Petition for Writ of Certiorari were mailed, postage prepaid, to Armis E. Hawkins, Attorney at Law, P. O. Box 266, Houston, Mississippi 38851, Counsel for the Respondents. I further certify that all parties required to be served have been served.

Harry N. Rayburn, Jr.

HARRY N. RAYBURN, JR.
Post Office Box 22684
Jackson, Mississippi 39205
Attorney for Petitioners

APPENDIX

TO

PETITION FOR A WRIT OF CERTIORARI

APPENDIX A

IN THE SUPREME COURT OF MISSISSIPPI

NO. 51,553

CHARLES H. BROWN, et al., Appellants

v.

JOE A. STONE, HOUSTON MUNICIPAL SEPARATE SCHOOL DISTRICT, et al., Appellees

BEFORE SMITH, WALKER AND BROOM

SMITH, PRESIDING JUSTICE,

FOR THE COURT:

This is an appeal by Charles H. Brown, father and next friend of Chad Allan Brown, a six year old boy, from a decree of the Chancery Court of Chickasaw County sustaining a demurrer filed to his bill which sought an injunction to compel the Board of Trustees of the Houston Municipal Separate School District to admit his son as a student without compliance

with the immunization requirements of Miss. Code Ann. §41-23-37(Supp. 1978). This statute provides, (among other things):

> Except as provided hereinafter, it shall be unlawful for any child to attend any school, kindergarten or similar type facility intended for the instruction of children (hereinafter called "schools"), either public or private, unless they shall first have been vaccinated against those diseases specified by the State Health Officer.
>
> A certificate of exemption from vaccination for medical reasons may be offered on behalf of a child by a duly licensed physician and may be accepted by the local health officer when, in his opinion, such exemption will not cause undue risk to the community. A certificate of religious exemption may be offered on behalf of a child by an officer of a church of a recognized denomination. This certificate shall certify that parents or guardians of the child are bona fide members of a recognized denomination whose religious teachings require reliance on prayer or spiritual means of healing.

There was filed with the bill the following certificate, signed by

a minister of the Church of Christ:

> Be it known that the Church of Christ as a religious body does not teach against the use of medecines, (sic) immunizations or vaccinations as prescribed by a duly (sic) physician. However, Dr. Charles Brown, our local chiropractor, who is a member of the North Jackson Street Church of Christ in Houston, Mississippi, does have strong convictions against the use of any kind of medications and we respect his views.
>
> /s/ Charles E. Bland
> Charles E. Bland
> Minister

The bill recited (a) that six year old Chad Allan Brown was of sufficient age and residence to qualify for admission to the first grade of the Houston Elementary School, but had not been vaccinated against those diseases specified under Senate Bill No. 2650 (Mississippi Code Annotated section 41-23-37, [1972] supra), enacted April 21, 1978, (b) Charles H. Brown, the father, has not permitted his son to be vaccinated because of "strong

and sincere religious beliefs actively practiced and followed" by Charles H. Brown, (c) Charles H. Brown is a member of the Church of Christ, a religious body which does not teach against the use of medicines, immunizations or vaccinations prescribed by a physician, (d) Charles H. Brown has sought a religious exemption from vaccination (of his son) but it was denied because the certificate did not comply with Senate Bill No. 2650, (e) Charles H. Brown was denied admission to the school because of the failure to be immunized under the provisions of Senate Bill No. 2650, (f) Senate Bill No. 2650 and Mississippi Code Annotated section 37-7-301(i)(1972) are invalid "insofar as they force complainants to join a religious organization in order to practice their religious tenants (sic) freely," and the denial

of admission of Chad Allan Brown violates complainants' rights protected by the First Amendment to the United States Constitution.

A general demurrer was interposed to the bill and sustained by the chancellor.

Appellants concede that mandatory immunization against dangerous diseases, without exemptions based on religious beliefs or convictions, has been held constitutionally valid as a reasonable exercise of police power. Jacobson v. Commonwealth of Massachusetts, 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643 (1905), Zucht v. King, 260 U.S. 174, 43 S.Ct. 24, 67 L.Ed. 194(1922). They contend, however, that the provision for religious exemption violates the First Amendment of the United States Constitution protecting the free exercise of religion.

Appellants rely upon a pronouncement of the New York Court in Maier v. Besser, 341 N.Y.S.2d 411(1972), which involved a suit of a parent on behalf of his children who had been required to leave school because they did not have a certificate of immunization in compliance with the New York Public Health Law, §2164(8) of which provided:

> This section shall not apply to children whose parent, parents, or guardians are bona fide members of a recognized religious organization whose teachings are contrary to the practices herein required, and no certificate shall be required as a prerequisite to such children being admitted or received into school or attending school.

In Maier, a case decided by the Supreme Court of Onondaga County, and which does not appear to have reached the Court of Appeals of New York, the court of last resort of that state, the parent asserted that because of religious beliefs entertained by himself and

his children which were "basically similar to those held by Christian Scientists," his children had not been immunized although it was admitted that they were not members of the Christian Scientist Church.

The New York Court (Onondaga County) held that there was no rational basis or legitimate public interest requiring that a person be a member of an organized religious body as distinguished from one whose genuine beliefs qualify him for a religious exemption.

The fundamental and paramount purpose of the Mississippi Legislature in the enactment of Senate Bill No. 2650, Mississippi Code Annotated section 41-23-37, was to afford protection for school children against crippling and deadly diseases by immunization. That this can be done effectively and safely has been incontrovertibly demonstrated

over a period of a good many years and is a matter of common knowledge of which this Court takes judicial notice.

If the religious exemption from immunization is to be granted only to members of certain recognized sects or denominations whose doctrines forbid it, and, as contended by appellants, to individuals whose private or personal religious beliefs will not allow them to permit immunization of their children, to this extent the highly desirable and paramount public purpose of the Act, that is, the protection of school children generally comprising the school community, is defeated.

Is it mandated by the First Amendment to the United States Constitution that innocent children, too young to decide for themselves, are to be denied the protection against crippling and

death that immunization provides because of a religious belief adhered to by a parent or parents?

In Wisconsin v. Yoder, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15(1972), the Court dealt with a mandatory school attendance requirement under a Wisconsin statute. Members of the Amish faith refused to comply and were convicted. When the case reached the Wisconsin Supreme Court the convictions were reversed. On certiorari to the United States Supreme Court the action of the Wisconsin Supreme Court was affirmed on the ground that the state's interest in compulsory education was not so compelling that the tenets of the Amish faith should be required to give way.

The Court said that in order to uphold a statute under such circumstances (where religious beliefs and public or state interests conflict) "it must ap-

pear either that the State does not deny the free exercise of religious belief by its requirement, or that there is a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause." (406 U.S. at 215, 32 L.Ed.2d at 24).

In Rampino, Religious Objection To Medical Treatment, 52 A.L.R.3rd 1118 (1973), the question of mandatory medical treatment of children whose lives are not in danger is discussed.

> [T]he courts have weighed the interest of the state in protecting its citizenry as against the desirability of religious freedom devoid of unnecessary governmental intrusion and have generally concluded that the state interest was paramount.
>
> Thus, for example, it has been settled that a state, as parens patriae, may order medical treatment to save the life of a child notwithstanding the parents' religious objec-

tions to the treatment.

> And it has likewise been decided that parental religious objection to the vaccination of a child, as a prerequisite to school attendance, must give way to the overriding interest of the state in protecting the community at large from the spread of contagious disease. (52 A.L.R. 3rd at 1119).

In Prince v. Commonwealth of Massachusetts, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944), rehearing denied, 321 U.S. 804, 88 L.Ed. 1090, 64 S.Ct. 784, the Court considered a state statute which prohibited child labor in public places. A member of Jehovah's Witnesses was convicted under the statute for directing her child to sell religious pamphlets on street corners. It was held that the statute did not violate the parent's religious freedom and that the right to practice religion freely does not include the liberty to expose the community or the child to

communicable disease or the latter to ill health or death. 52 A.L.R. 3rd at 1120.

The case of Cude v. State, 237 Ark. 927, 377 S.W. 2d 816 (1964) involved a question closely analogous with that under consideration here. The parents of three school age children refused to permit vaccination of their children as required by statute for school attendance, contending that it was contrary to their religion to do so. Persistent violation of the school attendance law resulted in the conviction of the father. When fined for this breach he continued to refuse to have the children vaccinated so that they could attend school as mandated by statute. The children were placed in custody of the Child Welfare Division and the issue reached the Arkansas Supreme Court. For the purposes of the appeal, the Arkansas Supreme Court

assumed that the Cudes held a claimed religious belief in "good faith." In disposing of the case the Court said:

> The U. S. Supreme Court said in Prince v. Commonwealth of Massachusetts, 321 U.S. 158, 64 S. Ct. 438, 88 L.Ed.645: "The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death. * * * Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves."
>
> It is a matter of common knowledge that prior to the development of protection against smallpox by vaccination, the disease, on occasion, ran rampant and caused great suffering and sickness throughout the world. According to the great weight of authority, it is within the police power of the State to require that school children be vaccinated against smallpox, and that such requirement does not violate the constitutional rights of anyone, on religious grounds or otherwise. In fact, this principle is so firmly settled that no extensive discussion is required.
>
> . . . .

In cases too numerous to mention, it has been held, in effect, that a person's right to exhibit religious freedom ceases where it overlaps and transgresses the rights of others. We cite a few cases upholding the validity of statutes requiring vaccination, and affirming orders of courts authorizing blood transfusions, etc. In Re Whitmore, Dom.Rel.Ct.N.Y., 47 N.Y.S. 2d 143; vaccination of school child. Sadlock v. Board of Education, 137 N.J.L. 85, 58 A.2d 218; vaccination of school child. State v. Perricone, 37 N.J. 463, 181 A.2d 751; giving blood transfusion to infant. City of New Braunfels v. Waldschmidt, 109 Tex. 302, 207 S.W. 303; vaccination of school child. Mosier v. Barren County Board of Health, 308 Ky. 829, 215 S.W.2d 967; vaccination of school child; Board of Education of Mountain Lakes v. Maas, 56 N.J. Super. 245, 152 A.2d 394; vaccination of school child. In Re Clark, Ohio Com.Pl., 185 N.E.2d 128; blood transfusion for three year old child.

This court said in Seubold v. Fort Smith Special School District, 218 Ark. 560, 237 S.W.2d 884: "In Jacobson v. Commonwealth of Massachusetts, 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed.643, the Supreme Court of the United States considered the matter of compulsory vaccination as infringing on the rights claimed under the United States Constitution,

and held that a State law requiring compulsory vaccination did not deprive a citizen of liberty guaranteed by the United States Constitution. More recently, in the case of Zucht v. King, 260 U.S. 174, 43 S.Ct. 24, 25, 67 L. Ed. 194, the United States Supreme Court again considered the matter of compulsory vaccination; and Mr. Justice Brandeis, speaking for the Court said: '* * Long before this suit was instituted, Jacobson v. Massachusetts, 197 U.S. 11, 25 S. Ct. 358, 49 L.Ed. 643, 3 Ann. Cas. 765, had settled that it is within the police power of a state to provide for compulsory vaccination.'" (377 S.W.2d at 819).

After a thoughtful consideration of the facts and the arguments advanced by appellants, we have concluded that the statute in question, requiring immunization against certain crippling and deadly diseases particularly dangerous to children before they be admitted to school, serves an overriding and compelling public interest, and that such interest extends to the exclusion of a child until such immunization has been effected, not only as a protection of that child

but as a protection of the large number of other children comprising the school community and with whom he will be daily in close contact in the school room. The relationship of parent and child is one in which the law concerns itself more with parental duties than with parental rights. The relationship carries with it a duty resting upon the parent to provide the child with food, clothing and shelter and to protect the child from preventable exposure to danger, disease and immorality. It must not be forgotten that a child is indeed himself an individual, although under certain disabilities until majority, with rights in his own person which must be respected and may be enforced. Where its safety, morals and health are involved, it becomes a legitimate concern of the state.

The protection of the great body of school children attending the public

schools in Mississippi against the horrors of crippling and death resulting from poliomyelitis or smallpox or from one of the other diseases against which means of immunization are known and have long been practiced successfully, demand that children who have not been immunized should be excluded from the school community until immunization has been accomplished. That is the obvious overriding and compelling public purpose of Senate Bill No. 2650. To the extent that it may conflict with the religious beliefs of a parent, however sincerely entertained, the interests of the school children must prevail. Senate Bill No. 2650 is a reasonable and constitutional exercise of the police power of the state insofar as it provides for the immunization of children before they are to be permitted to enter school.

The exception, which would provide for the exemption of children of parents whose religious beliefs conflict with the immunization requirements, would discriminate against the great majority of children whose parents have no such religious convictions. To give it effect would result in a violation of the Fourteenth Amendment to the United States Constitution which provides that no state shall make any law denying to any person within its jurisdiction the equal protection of the laws, in that it would require the great body of school children to be vaccinated and at the same time expose them to the hazard of associating in school with children exempted under the religious exemption who had not been immunized as required by the statute.

In Wilson v. Jones County Board of Supervisors, 342 So.2d 1293 (1977), this

Court said:

> It is the Court's duty in passing on the constitutionality of a statute to separate the valid from the invalid part, if this can be done, and to permit the valid part to stand unless the different parts of the statute are so intimately connected with and dependent upon each other as to warrant a belief that the legislature intended them as a whole, and that if all cannot be carried into effect it would not have enacted the residue independently. Howell v. State, 300 So.2d 774, 781 (Miss. 1974); American Express Co. v. Beer, 107 Miss. 528, 536, 65 So. 575 (1914); Adams v. Standard Oil Co., 97 Miss. 879, 53 So. 692 (1910); Campbell v. Miss. Union Bank, 7 Miss. 625 (1842).
>
> . . . .
>
> If when the unconstitutional portion is stricken out, that which remains is complete in itself, and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must be sustained.
> (342 So.2d at 1296).

We have no difficulty here in deciding that the statute is "complete in itself" without the provision for

religious exemption and that it serves a compelling state interest in the protection of school children. Therefore, we hold that the provision providing an exception from the operation of the statute because of religious belief is in violation of the Fourteenth Amendment to the United States Constitution and therefore is void. As the United States Supreme Court said in In Re Gault, 387 U.S. 1, 13, 87 S.Ct. 1428, 1436, 18 L.Ed.2d 527 (1967): "Whatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."

We find that all of the other provisions of the statute are valid and constitutional and embody a reasonable exercise of the police power of the state.

The decree appealed from will, therefore, be affirmed.

AFFIRMED.

The case was considered by a conference of the Judges en banc.

PATTERSON, C. J., ROBERTSON, P. J., WALKER, BROOM, LEE, BOWLING AND COFER, JJ., CONCUR. SUGG, J., TOOK NO PART.

Entered this 19th day of December, 1979.

APPENDIX B

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT OF CHICKASAW COUNTY, MISSISSIPPI

CHARLES H. BROWN AND
CHAD ALLAN BROWN, A MINOR,
BY AND THROUGH CHARLES H.
BROWN, HIS NEXT FRIEND, Complainants

VERSUS NO. 8-0-9-2

JOE A. STONE, MARGARET ANN PEEL,
BILLY L. MARTIN, HERMAN K. SMITH,
AND COLUMBUS WRIGHT, MEMBERS OF
THE BOARD OF TRUSTEES OF THE
HOUSTON MUNICIPAL SEPARATE
SCHOOL DISTRICT, JACK CHEATHAM,
SUPERINTENDENT OF THE HOUSTON
MUNICIPAL SEPARATE SCHOOL DISTRICT
AND ANN DEXTER, PRINCIPAL OF THE
HOUSTON ELEMENTARY SCHOOL, Defendants

OPINION OF THE COURT

The Bill of Complaint filed herein by the minor child through his father, as next friend, sought to enjoin the School Board Defendant from refusing enrollment of a minor child in the first grade without a certificate of [illegible]nization. The Senate Bill #2650, [illegible]assed in the 1978 Legislature, and

which is incorporated into the Mississippi Code of 1972 in Section 41-23-37, required any child to be vaccinated to attend public or private schools, but said law provides that a certificate of religious exemption may be offered on behalf of the child by an officer of the church of a recognized denomination. This certificate would relieve the necessity of the immunization of the child based upon First Amendment rights of freedom of religion. There was attached to this Bill of Complaint, a certificate by the father of the child seeking the exemption because of religious beliefs. The Browns are members of the Church of Christ, a religious body that does not teach against the use of medicines, immunizations or vaccinations, and the Brown's minister so acknowledged that to be their religious tenet. However, Dr.

Charles Brown, the father of the minor, personally, had the religious conviction against the use of medications and immunizations and sought the exemption on his personal belief. The new law, as passed, requires that the certificate be offered by a person who was a member of a church that recognized reliance on prayers or spiritual means of healing.

To the Bill of Complaint, there was filed on behalf of the School Board, a demurrer seeking to show that the certificate of religious exemption offered did not comply with the exemption as spelled out in Section 41-23-37. The Court heard the demurrer and is now ready to make and enter its Opinion.

It has been recognized that mandatory immunization against dangerous disease, without exemptions based on religious beliefs or convictions, is constitutionally valid as a reasonable

exercise of police power, (Jacobson v. Commonwealth of Massachusetts, 197 U.S. 11, 25 S. Ct. 358, 49 L. Ed. 643; Zucht v. King, 260 U.S. 174, 43 S. Ct. 24, 67 L. Ed. 194.).

The Complainants contend that they recognize that the state, in its exercise of its police power, may require mandatory immunizations. However, the Complainants contend that when a religious exemption is made that the state must be fair in its exemption and protect the freedom of religion as is protected in the First Amendment of the United States Constitution. The Complainants further contend that the Mississippi statute requires a person to be a member of a recognized denomination which religious teachings require reliance on prayer or spiritual means of healing, but do not afford to an individual the same right if he

happens to be a member of a church that does not require reliance on prayer or spiritual means of healing. The Complainants relied upon a New York decision of 1972, Maier v. Besser, 341 N.Y.S. 2d 411. This case emphasized the same position that the Complainants took in the instant case that the law required an individual to join a religious organization in order to practice their religious tenets freely. And the Supreme Court, County of Onondaga, New York, held that a person would qualify for the statutory exemption if he had genuine and sincere religious beliefs which he actively practiced and followed and which was, in reality, substantially similar to the Christian Scientist faith.

The Court is of the opinion that the Certificate of religious exemption filed in this case does not comply with the state law, and that, therefore, the

demurrer is well taken and should be sustained, and that the law passed by the 1978 Legislature is a proper exercise of police powers of the State of Mississippi.

You may prepare your order accordingly, gentlemen.

/s/Lenore L. Prather
CHANCELLOR

Filed December 22, 1978
Derwood McCullough
Clerk

APPENDIX C

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT OF THE COUNTY OF CHICKASAW, STATE OF MISSISSIPPI.

CHARLES H. BROWN AND CHAD ALLAN BROWN, A MINOR, BY AND THROUGH CHARLES H. BROWN, HIS NEXT FRIEND----Complainants

VS.

JOE A. STONE, et al.--------Defendants

CAUSE NO. 8-0-9-2

FINAL DECREE

This day the above-styled and numbered Cause came on to be heard upon the original Bill of Complaint of Charles H. Brown, suing on behalf of his minor son Chad Allan Brown, and as his Next Friend, the Answer of the Defendants Joe A. Stone, Margaret Ann Peel, Billy L. Martin, Herman K. Smith, and Columbus Wright, members of the Board of Trustees of Houston Municipal Separate School District, Jack Cheatham, Superintendent of said District, and

Ann Dexter, Principal of the Houston Elementary School, and General Demurrer of the Defendants, and the Court having heard and considered the Demurrer, and argument of counsel, finds:

1. That the General Demurrer of the Bill of Complaint is well-taken and should be sustained.

It is therefore now by the Court Ordered, Adjudged and Decreed that the Bill of Complaint and this cause of action be, and the same is hereby dismissed, and the Complainants are assessed with all costs.

All of which is Ordered, Adjudged and Decreed by the Chancellor in Vacation, on this the 20th day of December, 1978.

/s/Lenore L. Prather
CHANCELLOR

Filed December 22, 1978
Derwood McCullough
Clerk

APPENDIX D

IN THE SUPREME COURT OF MISSISSIPPI

NO. 51,553

CHARLES H. BROWN, et al., Appellants

v.

JOE A. STONE, HOUSTON MUNICIPAL SEPARATE SCHOOL DISTRICT, et al., Appellees

ORDER DENYING REHEARING

Wednesday, January 9, 1980, Court Sitting:

This cause this day came on to be heard on Petition for Rehearing and this Court having sufficiently examined and considered the same en banc and being of the opinion that the same should be denied doth order that said Petition be and the same is hereby denied.

APPENDIX E

Miss. Code Ann. §37-7-301(1972):

POWERS AND DUTIES OF BOARDS OF TRUSTEES.

The boards of trustees of school districts shall have the following powers, authority, and duties in addition to all others imposed or granted by law, to wit:

...

(i) To require, upon the recommendation of the state board of health, and the county health officer in whose health jurisdiction the school rests, the vaccination of school children against smallpox, typhoid fever, poliomyelitis or other contagious or infectious diseases and to require chest X-rays as soon as practicable, and to exclude from the schools children

who have not been so vaccinated, as soon as practicable. However, the provisions hereof shall not apply to children whose parents or guardians are certified by an officer of their church to be bona fide members of a recognized denomination whose religious teachings require reliance on prayer or spiritual means for healing. It is further provided that no child shall be required to submit to any vaccination where the parent has caused to be filed with the board of trustees a certificate of a physician that such vaccination would be dangerous to the health or safety of such child.

APPENDIX F

STATE IMMUNIZATION REQUIREMENTS

Source: Department of Health, Education and Welfare
Public Health Service
Center for Disease Control
Atlanta, Georgia 30333

1. All fifty (50) states have mandatory school immunization laws.

2. All fifty (50) laws provide for medical exemptions.

3. Forty-eight (48) of the state laws provide for religious exemptions. (Only Missouri and Minnesota do not. Minnesota does, however, provide a philosophical exemption.)

4. Seventeen (17) state laws provide for philosophical exemptions. They are: California, Georgia, Idaho, Kansas, Louisiana, Maine, Michigan, Minnesota, Montana, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington.

Supreme Court, U.S.
FILED
JUL 21 1980
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1980

79-1574

CHARLES H. BROWN and CHAD ALLAN BROWN,
Petitioners

versus

JOE A. STONE, et al.,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF MISSISSIPPI

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

Armis E. Hawkins
P. O. Box 266
Houston, Mississippi 38851

Attorney for Respondents

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

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IN THE
SUPREME COURT OF THE UNITED STATES

NO. 79-1574

CHARLES H. BROWN and CHAD ALLAN BROWN,
Petitioners

v.

JOE A. STONE, et al., Respondents

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

September 26, 1978, the Petitioner Charles H. Brown, a resident of the Chickasaw County School District, on behalf of his son Chad Allan Brown, a minor, filed a Bill of Complaint in the Chancery Court in the First Judicial District of Chickasaw County, Mississippi, seeking an injunction against the Trustees of the Houston Municipal Separate School District and the Superintendent requiring the admission of his son as a first year student in the Houston Municipal Separate School District.

Brown, a chiropractor, alleged he had not permitted his son to be vaccinated because the vaccinations:

> "Are contrary to strong genuine and sincere religious beliefs actively practiced and followed by complainant. Complainant Brown is a member of the Church of Christ. Said Church does not, as a religious body, teach against the use of medicines, immunizations or vaccinations as prescribed by a physician."

Brown further alleged that the school had refused admittance because the vaccinations had not been taken; and that Senate Bill Number 2650 enacted by the Legislature of the State of Mississippi April 21, 1978 (codified in Mississippi Code of 1972 as Section 41-23-37), and Section 37-7-301, was invalid insofar as they forced "complainants to join a religious organization in order to practice their religious tenants (sic) freely."

The Defendants filed an Answer on November 27, 1978, in which they admitted that the child

had been refused admission, but not only because of the refusal of the father to have him vaccinated as required by law, but also because the child was ineligible to attend a school in the Houston Municipal Separate School District, because he had not received authority from the Chickasaw County School District to transfer. The answer also recited that the Complainant and his son did not reside within the Houston Municipal Separate School District.

Aside from the refusal to have the child vaccinated, the child was ineligible to attend the Houston Municipal Separate School District without a transfer authorization from the Chickasaw County School District in which he resided, and agreement by the Trustees of the Houston Municipal Separate School District to take him as a student. (##37-15-29, 37-15-31 Mississippi Code of 1972)

In addition to the Answer, the Defendants filed a General Demurrer to the Bill of Complaint.

The Chancellor heard the Demurrer first, and sustained it on the ground that the law passed by the Legislature was a proper exercise of police powers of the State of Mississippi. The opinion of the Court was filed December 22, 1978, and a Final Decree dismissing the Bill of Complaint, dated December 20, 1978, was filed on December 22, 1978.

On October 20, 1978, Chad Allan Brown was enrolled in the Woodland Attendance Center, an elementary school located in the Chickasaw County School District, and he completed his first year at this school on May 16, 1979. The actual status of Chad Allan Brown as a student is shown in the affidavit of Jack Cheatham, Superintendent of the Houston Municipal Separate School District, executed June 26, 1979, and filed with the Mississippi

Supreme Court in response of a motion by the Appellants Charles H. Brown and Chad Allan Brown to advance the case on the docket. It is also shown by the affidavit of Doyle McQuary, Superintendent of Education of Chickasaw County, attached as Appendix "1" to this Response.

At the conclusion of the 1978-79 school year, Chad Allan Brown transferred from the Woodland Attendance Center to the Ridgeland Elementary School located in, and part of the Madison County School District in Madison County, Mississippi, some 130 miles distance from the Houston Municipal Separate School District. He was enrolled in the Ridgeland Elementary School on August 24, 1979, and satisfactorily completed his second year of school in the 1979-80 school year, and has been promoted to the Third Grade of the Ridgeland Elementary School. He is now enrolled as a student in that public school for the 1980-81 school year. The current

status of this child is shown by the affidavit of John C. Williams, Jr., County Superintendent of Education of Madison County, Mississippi, attached as Appendix "2" to this Response.

LEGAL ARGUMENT BEFORE THE SUPREME COURT OF MISSISSIPPI

As Appellant in the Mississippi Supreme Court, Petitioners conceded that mandatory immunization against dangerous disease, without exemption based upon religious beliefs or convictions, was constitutionally valid. However, Petitioners argued the religious exemption was unconstitutional in that it required a person to belong to a recognized denomination to qualify for the religious exemption. Page 3 of Petitioner's Brief states the following:

> "Appellants admit that mandatory immunization against dangerous disease, without exemption based on religious beliefs or convictions, has been held

constitutionally valid as a reasonable exercise of police power. Jacobson v Commonwealth of Massachusetts, 197 U. S. 11, 25 S. Ct. 358, 49 L. Ed. 643 (1905); Zucht v King, 260 U. S. 174, 43 S. Ct. 24, 67 L. Ed. 194 (1922).

"However, Mississippi has created a religious exemption in its vaccination statute, and in doing so the state must not allow this religious exemption to operate unconstitutionally, i.e. to the exclusion of those persons who profess strong religious beliefs but who are not members of some certain recognized denominational church."

Again on page 6:

". . .Religious exemption from the vaccination requirements provided for in Mississippi Code annotated Section 41-23-37 should not be based upon membership in some certain church. Such requirement of membership allows the exemption to operate unconstitutionally."

Again on page 1 of the Rebuttal Brief is the following statement:

"Appellants maintain the statute is unconstitutional in that it requires membership in a church as the measurement for whether one qualifies for a religious exemption from the statute."

As authority for the proposition the statute was unconstitutional, Petitioners cited two cases: Maier v Besser, 341

N.Y.S.(2d) 411 (1972), and Kolbeck v Kramer, 202 A.2d 889 (N.J. 1964).

The Appellee School District distinguished the cited cases from Petitioners' case, in that the Plaintiffs in both Kolbeck and Maier belonged to no formal religious denomination, whereas in the instant case the Petitioner Brown belonged to the Church of Christ. The Respondents argued that Petitioners' case was analagous to In Re: Elwell (N.Y. 1967) 284 N.Y.S.2d 924, and McCartney v Austin, (N.Y. 1968) 293 N.Y.2d 188. Both these cases held valid an almost identically worded statute as the Mississippi Statute. Elwell involved a Methodist chiropractor who argued it was against his conviction for his children to be vaccinated. In McCartney Roman Catholics argued for admission of their son, after refusing to have him vaccinated against polio.

Respondents also cited Itz v Penick (Texas 1973) 493 S.W.2d 506, in which the

denomination was not stated, but the Plaintiff testified he had strong religious convictions against vaccinations, and immunization conflicted with the denomination of which he or his children was an adherent or member. The Texas Court held the statute constitutional.

The Mississippi Supreme Court declared the entire religious exemption unconstitutional. Brown, et al. v Stone, et al. (Miss. 1979) 378 So(2d) 218.

The Mississippi Supreme Court's decision had three salutary effects:

(1) Other states may do as they please, but insofar as the school children of Mississippi are concerned, the Legislature of this state cannot enact a law which permits parents or guardians to refuse to have a child immunized on some claimed religious belief of their own, whether practiced by some organized denomination to which they belong as a part of its religious tenets, or by them individually.

(2) The discrimination in the statute about which Petitioner complained was totally removed.

(3) The statute now passes Constitutional muster.

PETITIONER HAS NO STANDING AND THE ISSUE IS MOOT

If the Mississippi Legislature had first passed a law requiring children to be immunized, and had given no religious exemption, Petitioners concede it would be a constitutional exercise of legislative power. The Mississippi Supreme Court has now re-written this statute to read in such a manner. Petitioner Brown can claim no discrimination against him or his child.

Petitioner Brown has never been harmed by the Respondent Houston Municipal Separate School District because his child was ineligible to attend the Houston Municipal Separate School District aside from his refusal to have the child vaccinated, and he

has long since removed his residence to another county in this state where his child attends school. We do not know whether the child has been immunized at this date or not.

This was a lawsuit between Brown and the Trustees and Superintendent of the Houston Municipal Separate School District. If the United States Supreme Court held the child need not be immunized, it would be of no benefit unless Brown established residence within the Houston Municipal Separate School District to satisfy other state requirements for admission of children to particular public schools.

Of the three questions counsel allege are presented for review, numbers 2 and 3 are clearly not before the Court, because these questions were not addressed by the Mississippi Supreme Court.

As to the first question, whether the statutory religious exemption to the mandatory vaccination of school children is

unconstitutional under the equal protection clause of the Fourteenth Amendment, Respondents respectfully submit:

1. The issue is moot. Sears, Roebuck v Carpet Layers, 397 U.S. 655, 25 L. Ed. 2d 637, 90 S. Ct. 1299; FeFunis v Odegaard, 1974, 416 U. S. 312, 40 L. Ed. 2d 164, 94 S. Ct. 1704.

2. Petitioner Brown has no standing. Flast v Cohen, 1968, 392 U.S. 83, 99, 20 L. Ed. 2d 947, 961, 88 S. Ct. 1942. ". . .when standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable." And, in this case 378 So 2d 218, page 222, the Mississippi Supreme Court, in quoting from Prince v Commonwealth of Massachusetts, 321 U.S. 158, 88 L. Ed. 645, 64 S. Ct. 438:

"The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death. . .Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves."

CONCLUSION

In conclusion, Respondents have not deprived Chad Allan Brown of a single day's attendance in the public schools of Mississippi.

Does a single parent have standing to assert a constitutional right to action, or as in this case inaction, which not only endangers the lives of countless others, but of his own child as well? It must be remembered that even though every other person with whom the non-vaccinated child came in contact were vaccinated, vaccinations are not perfect, they do not always afford immunization. A non-vaccinated child, whether afflicted with the

disease, or a silent carrier of such disease, would still endanger the lives of those in whom the vaccinations, for some reason or another, were ineffective.

> "There is no war between the Constitution and common sense." Mapp v Ohio (1961) 367 U.S. 643, 657, 6 L. Ed. 2d 1081, 1091, 81 S. Ct. 1684.

Respectfully submitted,

ARMIS E. HAWKINS,
P. O. Box 266,
Houston, Mississippi 38851,
Attorney for Respondents.

IN THE
SUPREME COURT OF THE UNITED STATES

NO. 79-1574

CHARLES H. BROWN and CHAD ALLAN BROWN,
Petitioners

v.

JOE A. STONE, et al., Respondents

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of July, 1980, three copies of the Response to Petition for Writ of Certiorari were mailed, postage prepaid, to Harry N. Rayburn, Jr., Attorney at Law, P. O. Box 22684, Jackson, Mississippi 39205, Counsel for the Petitioners. I further certify that all parties required to be served have been served.

ARMIS E. HAWKINS,
P. O. Box 266,
Houston, Mississippi 38851,
Attorney for Respondents

APPENDIX

TO

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

AFFIDAVIT OF JOHN C. WILLIAMS, JR.

THE STATE OF MISSISSIPPI)

COUNTY OF MADISON- - - -)

Personally appeared before me the undersigned authority in and for the said County and State, within my jurisdiction, the within-named John C. Williams, Jr., who being by me first duly sworn, upon his oath states the following, to-wit:

1. That he is the duly elected, constituted and acting County Superintendent of Education of Madison County, Mississippi, and as such public official is the custodian of all records pertaining to the children attending school within the Madison County School District. That the Ridgeland Elementary School is located in, and is a part of the Madison County School District.

2. That the records of the Madison County School District, and the Ridgeland Elementary School, show that Chad Allan Brown, the son of Charles H. Brown, was enrolled as a student in the second grade on August 24, 1979, and that he has satisfactorily completed his second year of school in the 1979-80 school year, and has been promoted to the Third Grade of the Ridgeland Elementary School. That he is now enrolled as a student for the

APPENDIX "2"

3. That the records further show that application was made for transfer of this student to the Ridgeland Elementary School in Madison County, Mississippi, at the conclusion of his attendance at the Woodland Attendance Center in May, 1979. Thereupon, the Woodland Attendance Center sent by mail the relevant school records of this child to the Ridgeland Elementary School, Post Office Box 236, Ridgeland, Mississippi 39157.

Doyle M. McQuary

DOYLE M. McQUARY

Sworn to, acknowledged and subscribed before me, on this the 6th day of June, A. D. 1980.

MY COMMISSION EXPIRES:

SYLVIA L. MARTIN
NOTARY PUBLIC
MY COMMISSION EXPIRES SEPT. 23, 1983

Sylvia L. Martin

NOTARY PUBLIC

AFFIDAVIT OF DOYLE M. McQUARY

THE STATE OF MISSISSIPPI)

COUNTY OF CHICKASAW- - -)

Personally appeared before me the undersigned authority in and for the said County and State, within my jurisdiction, the within-named Doyle M. McQuary, who being by me first duly sworn, upon his oath states the following, to-wit:

1. That he is the duly elected, constituted and acting County Superintendent of Education of Chickasaw County, Mississippi, and has held this office for a number of years. That as such public official, he is the official custodian of all records pertaining to children attending school within the Chickasaw County School District. That the Woodland Attendance Center is one of the public schools located within the Chickasaw County School District.

2. That the records of the Chickasaw County School District, and the Woodland Attendance Center show that Chad Allan Brown, the son of Charles H. Brown, was enrolled as a first year student in the Woodland Attendance Center for the school year 1978-79, this child beginning the attendance of school at said Attendance Center on October 20, 1978, and ending May 16, 1979.

APPENDIX "1"

school year 1980-81, and in the absence of his transferring to another school district, will be a student at the Ridgeland Elementary School.

JOHN C. WILLIAMS, JR.

Sworn to, acknowledged and subscribed before me, on this the 24th day of June, A. D. 1980.

MY COMMISSION EXPIRES:

My Commission Expires July 27, 1982

NOTARY PUBLIC